IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.2971 OF 2005

Anuradha Krishnaprasad Seth .. Petitioner.

Vs.

Ajaykumar Krishnaprasad Seth & anr. ..Respondents.

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Ms. Meena Kshirsagar h/f Mr. S.R. Mishra for the Petitioner.
Mr. Rakesh Pandey for Respondent No.1.

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CORAM: DR. D.Y. CHANDRACHUD, J.

21st June, 2006.

P.C. :

1. Rule. By consent of the learned counsel and at their request heard forthwith.

2. This is a dispute between a brother and a sister. The Petitioner is the sister of the First Respondent. The First Respondent has instituted a suit claiming declaration of tenancy. The Petitioner moved an application for being impleaded on the ground that under Section 5(11)(c) of the the Bombay Rents, Hotel and Lodging House Rates Control Act, 1947 the tenancy rights of the deceased father would devolve upon the Petitioner. The application was rejected by the impugned order. The Trial Judge

has noted that the Petitioner has also filed a suit under Section 6 of the Specific Relief Act on the ground that she had been wrongly dispossessed and that the suit will provide to her an ample opportunity to establish her rights.

3. There is a fundamental error in the approach of the Trial Court. In a suit under Section 6 of the Specific Relief Act the question of title, it is well settled, is not material and the only question is as to whether the person who applies for relief was wrongfully dispossessed within a period of six months prior to the date of institution.. Hence, the pendency of the suit filed by the Petitioner under Section 6 of the Specific Relief Act cannot be a ground to deny her the relief of impleadment in the declaratory suit filed by her brother. There is clearly a dispute between the Petitioner and the First Respondent as to who among them is entitled to a devolution of the tenancy rights under Section 5(11)(c). Undoubtedly, the plaintiff is dominus litis. However, having regard to the factual background of this case, it cannot be disputed that the Petitioner is in any case a proper party to the suit instituted by the First Respondent. Any adjudication in favour of the Respondent would directly affect the Petitioner, who has a claim in

respect of the tenancy rights.

4. Hence, the application for impleadment ought to have been allowed. The impugned order dated 21st February, 2005 is accordingly quashed and set aside. Interim Notice 661 of 2002 in R.A.D. Suit 520 of 2001 shall accordingly stand allowed by directing that the Petitioner shall be impleaded as a Second Defendant to the suit. The Petition is disposed of. There shall be no order as to costs.